

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS,)	
)	
Plaintiff,)	C.A. No.: 04-1350 (GMS)
)	
v.)	
)	
SYLVIA FOSTER, KATHYRN)	
SHENEMAN, MICHAEL TALMO,)	
DIANE STACHOWSKI, HELEN)	
HANLON, MARGERET WILSON,)	
MALE NURSE, DONNA LAWRENCE,)	
GLORIA BANKS, FLORENCE SCOTT)	
COBB, LANCE SAPERS, DAVE)	
MOFFITT, R. GRAY, C. OATS, ROSE)	
ARES, PAT RILEY, DR. OVRESHI,)	
CURTIS CORNISH, KAREN)	
CHAMBERLIN, SEGAL J., TANYA)	
WILSON, J. CONYER, MR. JOHNSON,)	
JOHN JOE,)	
)	
Defendants.)	

MOTION TO DISMISS COMPLAINT
FOR LACK OF SUBJECT MATTER JURISDICTION

Defendant, Sylvia Foster, M.D., hereby moves to dismiss the Complaint against her for lack of subject matter jurisdiction, and in support of her motion, states as follows:

1. A copy of the purported Complaint, along with the Civil Cover Sheet, is attached hereto as Exhibit "A".
2. Plaintiff has filed a document entitled "Additional Points to Support Motion Requesting Permission to Amend the Complaint" attached as Exhibit "B".
3. There is also another original Complaint filed in this matter in Civil Action No. 04-1350 (GMS) attached as Exhibit "C". The facts underlying Plaintiff's Complaint attached as Exhibit "A" are duplicative of the facts and allegations contained in the Complaint filed in Civil

Action No. 04-135 (GMS).

4. It appears that Plaintiff was attempting to file an Amended Complaint. The Motion to Amend the Complaint has never been granted to date. The Complaint that is designated in the original proceeding as shown in Exhibit "A" (without exhibits) should be dismissed since there is already a Complaint filed with the Court involving the exact same facts and allegations.

5. In addition, no service has been made to any of the parties regarding this purported original proceeding or Complaint renaming Sylvia Foster and attempting to name various other individuals as Defendants.

WHEREFORE, Defendant Sylvia Foster, M.D. requests the Court enter the Order attached hereto.

REGER RIZZO KAVULICH & DARNALL LLP

/s/ Cynthia G. Beam, Esquire
Cynthia G. Beam, Esquire
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(302) 652-3611
Attorney for Defendant Dr. Sylvia Foster

Dated: October 5, 2005

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FOR THE DISTRICT OF DELAWARE

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WILSON, J. CONYER, MR. JOHNSON,)	
JOHN JOE,)	
)	
Defendants.)	

ORDER

AND NOW, TO WIT, this ____ day of _____, 2005, having considered Defendant Dr. Sylvia Foster's Motion to Dismiss for Lack of Subject Matter Jurisdiction, and the Response thereto, if any:

IT IS HEREBY ORDERED that Defendant Dr. Sylvia Foster's Motion to Dismiss for Lack of Subject Matter Jurisdiction has been GRANTED and the above-captioned action is dismissed with prejudice.

BY THE COURT:

The Honorable Gregory M. Sleet

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Defendants.)	

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 5th day of October, 2005 that two true and correct copies of Defendant Dr. Sylvia Foster's Motion to Dismiss for Lack of Subject Matter Jurisdiction have been served electronically and/or by first class mail, postage prepaid, to the following:

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Attorney for Defendant Dr. Sylvia Foster

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